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## CONGRESSIONAL RECORD — HOUSE

October 10, 1954

operation in, air transportation or intrastate air transportation, has on or about his person or his property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight shall be subject to a civil penalty of not more than \$10,000 which shall be recoverable in a civil action brought in the name of the United States."

(2) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 901. Civil penalties."

is amended by inserting at the end thereof

"(c) Conveying false information.

"(d) Concealed weapons."

(b) Section 901(a)(2) of the Federal Aviation Act of 1958 49 U.S.C. 1471(a)(2) is amended by inserting "penalties provided for in subsections (c) and (d) of this section or" after "Secretary of Transportation in the case of".

(c)(1) Section 902(1)(1) of the Federal Aviation Act of 1958 49 U.S.C. 1472(a)(1) is amended by striking out "\$1,000" and inserting in lieu thereof "\$10,000".

(2) Section 902(1)(2) of the Federal Aviation Act of 1958 49 U.S.C. 1472(a)(2) is amended by striking out "\$5,000" and inserting in lieu thereof "\$25,000".

(d)(1) Section 902(m) of the Federal Aviation Act of 1958 49 U.S.C. 1472(m) is amended to read as follows:

**"FALSE INFORMATION AND THREATS"**

"(m)(1) Whoever willfully and maliciously, or with reckless disregard for the safety of human life, imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false and under circumstances in which such information may reasonably be believed, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a felony prohibited by subsection (1), (7), (8), or (9) of this section, shall be fined not more than \$25,000 or imprisoned not more than five years, or both.

"(2) Whoever imparts or conveys or causes to be imparted or conveyed any threat to do an act which would be a felony prohibited by subsection (1), (7), (8), or (9) of this section with an apparent determination and will to carry the threat into execution shall be fined not more than \$25,000 or imprisoned not more than five years, or both."

(2) That portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 902. Criminal penalties."

is amended by striking out

"(m) False information."

and inserting in lieu thereof

"(m) False information and threats."

Sec. 2015. This part shall become effective on the date of the enactment of this joint resolution.

**CHAPTER XXI—ACCESS DEVICES AND COMPUTERS**

Sec. 2201. This chapter may be cited as the "Computer Access Device and Computer Fraud and Abuse Act of 1954".

Sec. 2202. (a) Chapter 21 of title 18 of the United States Code as amended by chapter XVI of this joint resolution further amended by adding at the end thereof the following:

"§ 1028. Fraud and related activity in connection with computers

"(a) Whoever—

"(1) knowingly accesses a computer without authorization, or having accessed a computer with authorization, uses the op-

portunity such access provides for purposes in which such authorization does not extend, and by means of such conduct obtains information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph 1. of section 11 of the Atomic Energy Act of 1954, with the intent or reason to believe that such information so obtained is to be used to the injury of the United States, or to the advantage of any foreign nation;

"(2) knowingly accesses a computer without authorization, or having accessed a computer with authorization, uses the opportunity such access provides for purposes in which such authorization does not extend, and thereby obtains information contained in a financial record of a financial institution, as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), or contained in a file of a consumer reporting agency as a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

"(3) knowingly accesses a computer without authorization, or having accessed a computer with authorization, uses the opportunity such access provides for purposes in which such authorization does not extend, and by means of such conduct knowingly uses, modifies, destroys, or discloses information in, or prevents authorized use of, such computer, if such computer is operated for or on behalf of the Government of the United States and such conduct affects such operation;

shall be punished as provided in subsection (c) of this section. It is not an offense under paragraph (2) or (3) of this subsection in the case of a person having accessed a computer with authorization and using the opportunity such access provides for purposes in which such access does not extend, if the using of such opportunity consists only of the use of the computer.

"(b)(1) Whoever attempts to commit an offense under subsection (a) of this section shall be punished as provided in subsection (c) of this section.

"(2) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties engages in any conduct in furtherance of such offense, shall be fined an amount not greater than the amount provided as the maximum fine for such offense under subsection (a) of this section or imprisoned not longer than one-half the period provided as the maximum imprisonment for such offense under subsection (a) of this section, or both.

"(c) The punishment for an offense under subsection (a) or (b)(1) of this section is—

"(1) A fine of not more than the greater of \$10,000 or twice the value obtained by the offense or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(1) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(2) A fine of not more than the greater of \$100,000 or twice the value obtained by the offense or imprisonment for not more than twenty years, or both, in the case of an offense under subsection (a)(2) of this section which occurs after conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(3) A fine of not more than the greater of \$5,000 or twice the value obtained or twice

created by the offense or imprisonment for not more than one year, or both, in the case of an offense under subsection (a)(2) or (b)(2), of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

"(B) a fine of not more than the greater of \$10,000 or twice the value obtained or twice created by the offense or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(3) or (b)(3) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph.

"(d) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

"(e) As used in this section, the term 'computer' means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device; but such term does not include an automated typewriter or typewriter, a portable hand held calculator, or other similar device."

(b) The table of sections at the beginning of chapter 47 of title 18 of the United States Code is amended by adding at the end the following new items:

1028. Fraud and related activity in connection with computers."

Sec. 2203. The attorney General shall report to the Congress annually, during the first three years following the date of the enactment of this joint resolution, concerning prosecutions under the sections of title 18 of the United States Code added by this chapter.

**CHAPTER XXII**

Sec. 2201. Notwithstanding this or any other Act regulating labor-management relations, each State shall have the authority to enact and enforce, as part of a comprehensive statutory system to eliminate the threat of pervasive racketeering activity in an industry that is, or over time has been, affected by such activity, a provision of law that applies equally to employers, employees, and collective bargaining organizations, which provision of law governs activities in any position in a local labor organization which acts or seeks to act in that State as a collective bargaining representative pursuant to the National Labor Relations Act in the industry that is subject to that provision.

**CHAPTER XXIII**

Sec. 2201. (a) Subsection (a) of section 1963 of title 18 of the United States Code, as amended by chapter III of this title, is further amended by adding at the end the following: "In lieu of a fine otherwise authorized by this section, a defendant who obtains profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds."

(b) Section 1963 of title 18 of the United States Code, as amended by chapter III of this title, is further amended by striking out subsection (d).

(c) Section 1963 (a)(2) of title 18 of the United States Code, as amended by chapter III of this title, is further amended by striking

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al records to other agencies or de-  
cation.  
rtification and notice to customer.  
in mailing.  
nation reports by supervisory agen-  
financial records to defend custom-  
ding of information.

al records not identified with par-

to exercise of supervisory, regula-  
functions of financial institutions.  
to Internal Revenue Code.

to Federal statute or rule pro-  
er.

to Federal Rules of Civil or  
e or comparable rules of other

to administrative subpoena issued  
w judge.

to legitimate law enforcement in-  
me, address, account number, and  
particular customers.

to lawful proceeding, investiga-  
at financial institution or legal  
ion or administration respecting  
an guarantees, etc.

to issuance of subpoena or court  
nd jury proceeding.

to proceeding, investigation, etc.,  
l Accounting Office and direct-  
thority.

r departments of United States  
ons.

willful or intentional violation  
or employees of department or

lies and sanctions.

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## FINANCIAL PRIVACY

12 § 3401

Sec.

3421. Reporting requirements.

3422. Applicability to Securities and Exchange Commission.

## Library References

Banks and Banking § 17.  
Constitutional Law § 82(7).  
Searches and Seizures § 7(15).

C.J.S. Banks and Banking § 35.  
C.J.S. Constitutional Law § 213(17).  
C.J.S. Searches and Seizures § 36 et  
seq.

## § 3401. Definitions

For the purpose of this chapter, the term—

(1) "financial institution" means any office of a bank, sav-  
ings bank, card issuer as defined in section 1602(n) of Title 15,  
industrial loan company, trust company, savings and loan, build-  
ing and loan, or homestead association (including cooperative  
banks), credit union, or consumer finance institution, located in  
any State or territory of the United States, the District of Col-  
umbia, Puerto Rico, Guam, American Samoa, or the Virgin Is-  
lands;

(2) "financial record" means an original of, a copy of, or in-  
formation known to have been derived from, any record held by  
a financial institution pertaining to a customer's relationship  
with the financial institution;

(3) "Government authority" means any agency or department  
of the United States, or any officer, employee, or agent thereof;

(4) "person" means an individual or a partnership of five or  
fewer individuals;

(5) "customer" means any person or authorized representa-  
tive of that person who utilized or is utilizing any service of a  
financial institution, or for whom a financial institution is act-  
ing or has acted as a fiduciary, in relation to an account main-  
tained in the person's name;

(6) "supervisory agency" means, with respect to any particu-  
lar financial institution any of the following which has statuto-  
ry authority to examine the financial condition or business op-  
erations of that institution—

(A) the Federal Deposit Insurance Corporation;

(B) the Federal Savings and Loan Insurance Corpora-  
tion;

(C) the Federal Home Loan Bank Board;

(D) the National Credit Union Administration;

(E) the Board of Governors of the Federal Reserve Sys-  
tem;

(F) the Comptroller of the Currency;

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applicable if the provision is not an exception before a court. In addition, and I believe a relevant factor will take on great significance if, as will undoubtedly be the case, the information sought is contained in a computerized data base. Even if the FOIA staff determines that the information sought falls outside any FOIA exemption, and therefore may not be withheld, the question will then become whether the employee asked to release the data has authority to obtain it. In any case, the doubt is sure to be resolved against the interests of the public, since an incorrect insertion of authority could expose the Government employee to prosecution and imprisonment. It is not hard to imagine what will happen to the prevailing regime of voluntary compliance with FOIA, once this additional hurdle is placed in the way of the Public's right to know. Faced with the prospect of criminal prosecution, even for an authorized disclosure, more and more agency officials will play it safe, and let the courts decide.

I am sure that this consequence of the passage of this legislation is unintended. The authors of the computer crime bill surely did not set out to write a blanket secrecy statute rolling back the Freedom of Information Act; but, unfortunately, the plain language of the bill suggests that that is precisely what is before us today. A fuller legislative history might have helped to correct this problem; but the route that this bill has traveled has not been conducive to such explication. The provision that I have been discussing formed proposed section 1030(a)(5) of title 18, in H.R. 5616, the credit card fraud bill to which the computer crime legislation was attached in the House of Representatives. Both the report of the House Judiciary Committee on H.R. 5616, and the debate in the other body when it was passed last July, give scant attention to section 1030(a)(5). As I have mentioned, neither the House nor the Senate included these provisions in the continuing resolution. The computer crime sections were added by a subcommittee of the conference committee, literally in the middle of the night last Thursday, or the early hours of Friday morning. The full conference committee, distracted by ongoing disputes over wholly unrelated portions of the continuing resolution, ratified its subcommittee's recommendation, and the conference report has now been approved by the House. Nowhere along the line has there been an opportunity for the Senate to examine the computer crime bill in enough detail to iron out the problems that may be caused by the excessively broad sweep of this subsection, to say nothing of other parts of the bill that could be improved. One could hardly hope to find a better object lesson in the shortcomings of legislation by rider.

The problem of computer crime is a real and growing one. Our challenge is

to find a way to deal with it without creating a loophole system for obtaining hush kit exemptions. The language therein states: That an application for an exemption from compliance with Public Law 96-163—hush kits—must "include a copy of a contract entered into by the applicant and a known supplier." My concern is that the terms "contract" and "known supplier" are not sufficiently defined to prohibit the execution of bogus contracts by some unscrupulous carriers and "paper plan" suppliers, for the sole

purpose of obtaining an exemption from compliance with the provisions of the act. Will not such a contract yield?

Mr. BENTSEN. Yes, I am going to ask the Senator to yield.

Mr. CHILES. Mr. President, I would like the Senator to yield. The Senator from Texas has regarding these terms. Let me say that in no way are these terms meant to encourage bogus contracts or "paper plan" suppliers. By that I mean the Secretary of Transportation, in creating guidelines to provide for this exemption, shall carefully review both the contract and the status of the supplier, in the certification process, to determine whether an exemption is warranted. Therefore, exemptions issued under this provision shall only be issued, if and only if, a carrier has entered into a good faith contract with a bona fide supplier. By bona fide supplier, I mean one who has been substantially involved in the FAA's certification process for hush kits at the time of enactment of this legislation.

Mr. BENTSEN. Will the Senator yield?

Mr. CHILES. I yield.

Mr. BENTSEN. Mr. President, I am satisfied with the explanation of the senior Senator from Florida. It is my concern that this issue of exemption not impact on the competitive and free enterprise system.

EXEMPTIONS FROM AVIATION SAFETY AND NOISE ABATEMENT ACT

Mr. CHILES. Mr. President, the sponsors of the amendment to the continuing resolution which provided exemptions from the Aviation Safety and Noise Abatement Act for international operations at Miami and Bangor International Airports would like to take a moment of the Senate's time to engage in a colloquy on our specific intent in offering the amendment. Given the late hour, and the last-minute attempts at compromise which led to the development of the wording which has been adopted, it was not really possible for any of the sponsors to make any definitive statements as to what we were offering. And since it was what many of us felt to be a failure of the Department of Transportation to properly interpret existing law that led to this entire effort, I would like to ensure that we limit the possibility of a repetition by being rather specific.

Mrs. HAWKINS. I would like to first note that what we have in effect done is to determine, by passage of the amendment, that carriers conducting international operations out of Miami and Bangor, and which operate aircraft that can be brought into compliance by hush kits currently under development, meet the exemption requirements of the Aviation Safety and Noise Act with respect to "valuable air service," "financial havoc" and delayed or unavailability of necessary technology for compliance. We have

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